

Barker, Epstein & Loscocco
176 Federal Street
Boston, Massachusetts 02110

(617) 482-4900
FAX: (617) 426-5251

Photolaw@aol.com
Direct Telephone: (617) 272-5700

July 20, 2023

Honorable Indira Talwani
United States District Court for the District of Massachusetts
1 Courthouse Way
Boston, Massachusetts 02210

Re: **Citation of Supplemental Authority**
Sonya Larson v. Dawn Dorland Perry
Civil Action No. 1:19-cv-10203,
Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith,
143 S. Ct. 1258 (2023)

Dear Judge Talwani:

In her Memorandum [Dkt # 189, p. 32/37], Larson cited Andy Warhol Found. v. Goldsmith while it was on appeal to the Supreme Court. The Court recently issued its decision.

The Court said that determinations of fair use are highly contextual, fact specific and are not easily reduced to rigid rules. The application of fair use must be flexible in light of the sometimes conflicting aims of copyright law. Its applications may vary depending upon context. Id. at 1274.

The Dorland Letter and the letter in Larson's story were used for vastly different purposes. Larson used her letter to introduce a new person into her fictional story, and to start a white savior dynamic between the two main characters. [Dkt. # 189, p. 31/37] In sharp contrast, Dorland wrote her letter for utilitarian and not artistic reasons [Id. at 1274]. Dorland thought that the woman who received a kidney in her kidney chain deserved information about Dorland and what led her to become a living kidney donor. "And I just thought putting myself in the shoes of someone who had that opportunity suddenly, they might want to know a little bit about what brought it about. That was my purpose." [See Exhibit A.]

Honorable Indira Talwani
United States District Court
July 20, 2023
Page 2.

Larson transformed the Dorland letter into something with a new meaning and message. Larson's letter has a totally different character from the Dorland Letter. Also, the Dorland Letter needs context to tell a complete story. It is not a stand-alone document.

Even with the publicity that has surrounded this controversy for over 4½ years, there has not been a single inquiry by anyone wanting to use the Dorland Letter for commercial or any other purpose. [Dkt. # 192-9, Exhibit 39] Dorland is the only person who has used the letter, and it is being used merely to attack and discredit Larson, not for commercial gain. Unlike Warhol and Goldsmith, there is no obvious commercial value for the Dorland Letter. [Dkt. # 189, p. 33 & 35/37].

The decision in Goldsmith enhances Larson's claim of fair use.

Very truly yours,

/s/ Andrew D. Epstein

Andrew D. Epstein

Certificate of Service

I certify that Plaintiff-Third Party Defendant, Sonya Larson's letter to court regarding citation of Supplemental Authorities was filed through the court's ECF system and a copy was sent electronically on the day it was filed to all counsel of record.

/s/ Andrew D. Epstein

July 20, 2023

Andrew D. Epstein